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HOUSE BILL 860

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO ELECTIONS; PERMITTING SAME-DAY REGISTRATION AND  
VOTING AT PRIMARY AND GENERAL ELECTIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-1-16 NMSA 1978 (being Laws 1969,  
Chapter 240, Section 16, as amended) is amended to read:

"1-1-16. REGISTRATION OFFICER.--As used in the Election  
Code, "registration officer" means the secretary of state, a  
county clerk or a clerk's authorized deputy, a member of a  
precinct board on election day, a member of the board of  
registration or a state employee performing registration duties  
in accordance with the federal National Voter Registration Act  
of 1993 or Section 1-4-5.2 NMSA 1978."

Section 2. Section 1-4-5.1 NMSA 1978 (being Laws 1993,  
Chapter 314, Section 7 and Laws 1993, Chapter 316, Section 7,  
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1 as amended) is amended to read:

2 "1-4-5.1. METHOD OF REGISTRATION--FORM.--

3 A. A qualified elector may apply for registration:

4 (1) by mail;

5 (2) in the office of the secretary of state or  
6 county clerk ~~[or]~~;

7 (3) with a registration agent or officer; or

8 (4) on election day at a polling place in the  
9 county in which the qualified elector resides.

10 B. A person may request certificate of registration  
11 forms ~~[may be requested]~~ from the secretary of state or any  
12 county clerk in person, by telephone or by mail for ~~[oneself]~~  
13 that person or for ~~[others]~~ other persons. A qualified elector  
14 may request a certificate of registration form from a precinct  
15 board member on election day at a polling place in the county  
16 in which the qualified elector resides.

17 C. Except as provided in Subsection D of this  
18 section, a qualified elector who wishes to register to vote  
19 shall fill out completely and sign the certificate of  
20 registration. The qualified elector may seek the assistance of  
21 any person in completing the certificate of registration.

22 D. A qualified elector who has filed for an order  
23 of protection pursuant to the provisions of the Family Violence  
24 Protection Act and who presents a copy of that order from a  
25 state or tribal court to the registration officer shall not be

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1 required to provide address information on the certificate of  
2 registration.

3 E. Completed certificates of registration may be  
4 mailed or presented in person by the registrant or any other  
5 person to the secretary of state [~~or~~], presented in person by  
6 the registrant or any other person to the county clerk of the  
7 county in which the registrant resides or presented on election  
8 day in person by the registrant to a precinct board member at a  
9 polling place in the county in which the registrant resides.

10 F. If the registrant wishes to vote in the next  
11 election, the completed and signed certificate of registration  
12 shall be delivered or mailed and postmarked at least twenty-  
13 eight days before the election or presented on election day in  
14 person by the registrant to a precinct board member at a  
15 polling place in the county in which the registrant resides.

16 G. A certificate of registration presented by a  
17 registrant to a precinct board member on election day shall be  
18 returned to the county clerk with the election returns and  
19 materials destined for the county clerk.

20 [~~G.~~] H. Upon receipt of a certificate of  
21 registration, the secretary of state shall send the certificate  
22 to the county clerk in the county where the qualified elector  
23 resides.

24 [~~H.~~] I. Only when the certificate of registration  
25 is properly filled out, signed by the qualified elector and

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1 accepted for filing by the county clerk as evidenced by the  
2 county clerk's signature or stamp and the date of acceptance  
3 thereon and when notice has been received by the registrant  
4 shall it constitute an official public record of the  
5 registration of the qualified elector.

6 ~~[F.]~~ J. The secretary of state shall prescribe the  
7 form of the certificate of registration, which form shall be a  
8 postpaid mail-in format and shall be printed in Spanish and  
9 English. The certificate of registration form shall be clear  
10 and understandable to the average person and shall include  
11 brief but sufficient instructions to enable the qualified  
12 elector to complete the form without assistance. The form  
13 shall also include:

14 (1) the question "Are you a citizen of the  
15 United States of America?" and boxes for the applicant to check  
16 to indicate whether the applicant is or is not a citizen;

17 (2) the question "Will you be at least  
18 eighteen years of age on or before election day?" and boxes for  
19 the applicant to check to indicate whether the applicant will  
20 be eighteen years of age or older on election day;

21 (3) the statement "If you checked 'no' in  
22 response to either of these questions, do not complete this  
23 form.";

24 (4) a statement informing the applicant that:

25 (a) if the form is submitted by mail by

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1 the applicant and the applicant is registering for the first  
2 time in New Mexico, the applicant must submit with the form a  
3 copy of: 1) a current and valid photo identification or voter  
4 identification card; or 2) a utility bill, bank statement,  
5 government check, paycheck, student identification card or  
6 other government document, including identification issued by  
7 an Indian nation, tribe or pueblo, that shows the name and  
8 address of the applicant; and

9 (b) if the applicant does not submit the  
10 required identification, ~~[he]~~ the applicant will be required to  
11 do so when voting in person or absentee; and

12 (5) a statement requiring the applicant to  
13 swear or affirm that the information supplied by the applicant  
14 is true."

15 Section 3. Section 1-4-8 NMSA 1978 (being Laws 1969,  
16 Chapter 240, Section 66, as amended) is amended to read:

17 "1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF  
18 REGISTRATION--CLOSE OF REGISTRATION--ELECTION-DAY  
19 REGISTRATION--FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS--  
20 LATE REGISTRATION.--

21 A. For qualified electors other than federal  
22 qualified electors or overseas voters, the following provisions  
23 shall apply:

24 (1) the county clerk shall receive  
25 certificates of registration at all times during normal working

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1 hours, except that the clerk shall close registration at  
2 5:00 p.m. on the twenty-eighth day immediately preceding any  
3 election at which the registration books are to be furnished to  
4 the precinct board;

5 (2) on election day and before provisional  
6 ballots are qualified for that election, the county clerk shall  
7 accept and file certificates of registration for qualified  
8 electors who register to vote on election day at a polling  
9 place in the county in which the qualified elector resides;

10 [~~2~~] (3) registration shall be reopened on  
11 the Monday following the election;

12 [~~3~~] (4) for purposes of a municipal or  
13 school election, the registration period for those precincts  
14 within the municipality or school district is closed at 5:00  
15 p.m. on the twenty-eighth day immediately preceding the  
16 municipal or school election and is opened again on the Monday  
17 following the election;

18 [~~4~~] (5) during the period when registration  
19 is closed, the county clerk shall receive certificates of  
20 registration and other documents pertaining thereto but,  
21 except for certificates of registration received on election  
22 day, shall not file the certificate of registration in the  
23 registration book until the Monday following the election, at  
24 which time a voter identification card shall be mailed to the  
25 registrant at the address shown on the certificate of

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1 registration;

2 [~~(5)~~] (6) when the twenty-eighth day prior to  
3 any election referred to in this section is a Saturday, Sunday  
4 or legal holiday, registration shall be closed at 5:00 p.m. of  
5 the next succeeding regular business day for the office of the  
6 county clerk; and

7 [~~(6)~~] (7) the county clerk shall accept for  
8 filing any certificate of registration that is subscribed and  
9 dated on or before the twenty-eighth day preceding the election  
10 and received by the county clerk before 5:00 p.m. on the Friday  
11 immediately following the close of registration. The county  
12 clerk shall accept for filing any mailed certificate of  
13 registration postmarked not less than twenty-eight days prior  
14 to any election referred to in this section and received by  
15 5:00 p.m. on the Friday immediately following the close of  
16 registration. The county clerk shall accept for filing any  
17 certificate of registration accepted at a state agency  
18 designated pursuant to Section 1-4-5.2 NMSA 1978 not later than  
19 twenty-eight days prior to any election.

20 B. For federal qualified electors and overseas  
21 voters, the county clerk shall accept a certificate of  
22 registration by electronic transmission from a voter qualified  
23 to apply for and vote by absentee ballot in the county if the  
24 transmission is received before 5:00 p.m. on the Friday  
25 immediately preceding the election."

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1 Section 4. Section 1-12-7.2 NMSA 1978 (being Laws 1969,  
2 Chapter 240, Section 114, as amended) is amended to read:

3 "1-12-7.2. [~~VOTER~~] QUALIFIED ELECTOR WHOSE NAME IS NOT ON  
4 LIST OR ROSTER.--

5 A. A voter whose name does not appear on the voter  
6 list and signature roster for the precinct in which [~~he~~] the  
7 voter offers to vote may register and shall be permitted to  
8 vote in the precinct pursuant to the federal National Voter  
9 Registration Act of 1993 and Section 1-12-8 NMSA 1978.

10 B. [~~The election clerks in charge of the signature~~  
11 ~~rosters shall add the voter's name and address in ink to the~~  
12 ~~signature roster on the line immediately following the last~~  
13 ~~entered voter's name and~~] If the qualified elector is not  
14 registered to vote and is at a polling place in the county in  
15 which the qualified elector resides, the [~~voter~~] qualified  
16 elector shall be allowed to sign an affidavit of eligibility  
17 and cast a provisional paper ballot; provided [~~he~~] the polling  
18 place is within the county in which the qualified elector  
19 resides and the qualified elector has first signed or marked  
20 both the signature roster and the checklist of registered  
21 voters. The election clerks in charge of the signature rosters  
22 shall add the voter's name and address in ink to the signature  
23 roster on the line immediately following the last entered  
24 voter's name.

25 C. The provisional paper ballot number for the

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1 [voter] person shall be entered on the affidavit of  
2 eligibility, the signature roster and the checklist of  
3 registered voters.

4 D. In a primary election, a voter shall not be  
5 permitted to vote for a candidate of a party different from the  
6 party designation shown on [~~his~~] the voter's certificate of  
7 registration. Upon making that determination, the county clerk  
8 shall transmit the ballot to the county canvassing board to be  
9 tallied and included in the canvass of that county for the  
10 appropriate precinct.

11 E. Verbal authorization from the county clerk to  
12 allow a person to vote is not permitted."

13 Section 5. Section 1-12-8 NMSA 1978 (being Laws 1969,  
14 Chapter 240, Section 247, as amended) is amended to read:

15 "1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING.--

16 A. A person shall be permitted to vote on a  
17 provisional paper ballot even though the person's original  
18 certificate of registration cannot be found in the county  
19 register or even if the person's name does not appear on the  
20 signature roster, provided:

21 (1) the person's residence is within the  
22 boundaries of the county in which the person offers to vote;  
23 and

24 (2) the person's name is not on the list of  
25 persons submitting absentee ballots; and either

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1 (3) the person executes a statement swearing  
2 or affirming to the best of the person's knowledge that the  
3 person is a qualified elector, is currently registered and  
4 eligible to vote in that county and has not cast a ballot or  
5 voted in that election; or

6 (4) the person is not registered and registers  
7 to vote on election day at a polling place in the county in  
8 which the person resides, in accordance with the provisions of  
9 Section 1-12-7.2 NMSA 1978.

10 B. A voter shall vote on a provisional paper ballot  
11 if the voter:

12 (1) has not previously voted in a general  
13 election in New Mexico or has been purged from the voter list;

14 (2) registered to vote by mail;

15 (3) did not submit the physical form of the  
16 required voter identification with the certificate of  
17 registration form; and

18 (4) does not present to the election judge a  
19 physical form of the required voter identification.

20 C. A voter shall vote on a provisional ballot in  
21 accordance with the provisions of Section 1-12-7.1 NMSA 1978 if  
22 the voter does not provide the required voter identification to  
23 the election judge.

24 D. An election judge shall have the voter sign the  
25 signature roster and issue the voter a provisional paper

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1 ballot, an outer envelope and an official inner envelope. The  
2 voter shall vote on the provisional paper ballot in secrecy and  
3 when done, place the ballot in the official inner envelope and  
4 place the official inner envelope in the outer envelope and  
5 return it to the precinct officer. The election judge shall  
6 ensure that the required information is completed on the outer  
7 envelope, have the voter sign it in the appropriate place and  
8 place it in an envelope designated for provisional paper  
9 ballots.

10 E. Knowingly executing a false statement  
11 constitutes perjury as provided in the Criminal Code of this  
12 state, and voting on the basis of such falsely executed  
13 statement constitutes fraudulent voting."

14 Section 6. Section 1-12-8.1 NMSA 1978 (being Laws 2005,  
15 Chapter 270, Section 62) is amended to read:

16 "1-12-8.1. CONDUCT OF ELECTION--USE OF VOTER'S [COPY]  
17 RECEIPT OF CERTIFICATE OF REGISTRATION--PROCEDURES.---If a  
18 [~~voter whose~~] voter's name is not in the signature roster for  
19 the precinct in which the voter resides and the voter presents  
20 the voter's [~~duplicate~~] receipt of the voter's certificate of  
21 registration, the [~~voter shall be allowed to vote on a~~  
22 ~~provisional ballot in the proper precinct in accordance with~~  
23 ~~the provisions of Section 1-5-10 NMSA 1978. The~~] election  
24 judge shall inform the voter that the voter will be notified by  
25 the county clerk to provide a copy of the receipt of the

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1 certificate of registration to the county clerk if the original  
2 certificate is not located. The voter shall be allowed to  
3 register and cast a provisional ballot as provided in the  
4 Election Code. A note shall be entered on the signature roster  
5 indicating that the voter's certificate of registration should  
6 be checked by the county clerk. For the purposes of  
7 investigation or prosecution, the county clerk shall provide  
8 the district attorney and the secretary of state with the  
9 person's name and address and the corresponding receipt number  
10 of the person's certificate of registration for each person  
11 whose certificate of registration is not located."

12 Section 7. Section 1-12-20 NMSA 1978 (being Laws 1969,  
13 Chapter 240, Section 273, as amended) is amended to read:

14 "1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--A  
15 challenge may be interposed by a member of the precinct board  
16 or by a party challenger for the following reasons:

17 A. the person [~~presenting himself~~] who has come to  
18 vote is not registered and is not a qualified elector;

19 B. the person [~~presenting himself~~] who has come to  
20 vote is listed on the purge list placed with the signature  
21 rosters or is listed among those persons in the precinct from  
22 whom an absentee ballot was received;

23 C. the person [~~presenting himself~~] who has come to  
24 vote is improperly registered because [he] the person is not a  
25 qualified elector;

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1           D. in the case of a primary election, the person  
2 ~~[presenting himself]~~ who has come to vote is not affiliated  
3 with a political party represented on the ballot; or

4           E. in the case of an absentee ballot, the official  
5 outer envelope of the absentee voter has been opened prior to  
6 the counting of the ballots."

7           Section 8. Section 1-12-25.4 NMSA 1978 (being Laws 2003,  
8 Chapter 356, Section 7, as amended) is amended to read:

9           "1-12-25.4. PROVISIONAL PAPER BALLOTS--DISPOSITION.--

10           A. Upon closing of the polls, provisional paper  
11 ballots shall be delivered to the county clerk, who shall  
12 determine if the ballots will be counted prior to certification  
13 of the election.

14           B. A provisional paper ballot shall not be counted  
15 if the registered voter did not sign either the signature  
16 roster or the ballot's envelope.

17           ~~[C. If there is no record of the voter ever having  
18 been registered in the county, the voter shall be offered the  
19 opportunity to register and the provisional paper ballot shall  
20 not be counted.~~

21           ~~D.]~~ C. If the voter was registered in the county,  
22 the registration was later canceled and the county clerk  
23 determines that the cancellation was in error, the voter's  
24 registration shall be immediately restored and the provisional  
25 paper ballot counted.

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1           ~~[E-]~~ D. If the county clerk determines that the  
2 cancellation was not in error, the voter shall be offered the  
3 opportunity to register at the voter's correct address, and the  
4 provisional paper ballot shall not be counted.

5           ~~[F-]~~ E. If the voter is a registered voter in the  
6 county, but has voted on a provisional paper ballot at a  
7 polling place other than the voter's designated polling place,  
8 the county canvassing board shall ensure that only those votes  
9 for the positions or measures for which the voter was eligible  
10 to vote are counted.

11           ~~[G-]~~ F. If the county clerk finds that the voter  
12 who voted on a provisional paper ballot at the polls has also  
13 voted on an absentee ballot in that election, the provisional  
14 paper ballot shall not be counted.

15           ~~[H-]~~ G. The county canvassing board shall prepare a  
16 tally displaying the number of provisional paper ballots  
17 received, the number found valid and counted, the number  
18 rejected and not counted and the reason for not counting the  
19 ballots as part of the canvassing process and forward it to the  
20 secretary of state immediately upon certification of the  
21 election.

22           ~~[I-]~~ H. The secretary of state shall issue rules to  
23 ensure securing the secrecy of the provisional paper ballots,  
24 especially during canvassing, reviewing or recounting, and  
25 protecting against fraud in the voting process."

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